

ONE HUNDRED FIRST LEGISLATURE - SECOND SESSION - 2010
COMMITTEE STATEMENT (CORRECTED)
LB816

Hearing Date: Monday January 25, 2010
Committee On: Transportation and Telecommunications
Introducer: Fischer
One Liner: Change motor vehicle industry regulation provisions

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Campbell, Gay, Fischer, Hadley, Janssen, Lautenbaugh, Louden, Stuthman

Nay:

Absent:

Present Not Voting:

Proponents:

Dusty Vaughan
Loy Todd

Representing:

Senator Deb Fischer, Introducer
Nebraska New Car & Truck Dealers Association

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

LB 816 imposes additional requirements and standards on motor vehicle manufacturers and distributors in relation to franchise agreements with motor vehicle dealers.

Section by Section Summary

Sections 1 through 11 amend current sections of Nebraska law to provide harmonizing provisions to refer to Chapter 60, Article 14 as the Motor Vehicle Industry Regulation Act.

Section 12 renames Sec. 60-1401.01 to 60-1440 as the Motor Vehicle Industry Regulation Act. Any amendments to the act shall apply to franchise agreements which are already in existence whenever the existing agreement is amended, altered, modified, renewed, or extended.

Section 13 amends Sec. 60-1401.01 for clarity purposes.

Section 14 amends Sec. 60-1401.02 to strike the old definitions and state that the definitions found in Sections 15 to 52 apply to the Motor Vehicle Industry Regulation Act. The sections are re-assorted by alphabetical order.

Sections 15 to 19 provide new sections for current definitions by alphabetical order.

Section 20 creates a definition of "coerce" to mean to compel or manipulate a dealer to behave involuntarily by use of threats, intimidation, trickery, or some other form of pressure or force.

Section 21 moves the existing definition of "community" found in Sec. 60-1407 to its own section of law.

Section 22 to 33 provide new sections for current definitions by alphabetical order.

Section 34 defines "line-make" to mean vehicles offered for sale, lease or distribution under a common or brand name of the franchisor or manufacturer (i.e. Pontiac brand name sold by GM).

Section 35 updates the reference to federal law for the current definition of mobile home as it existed on January 1, 2010.

Section 36 amends the current definition of "manufacturer" to mean an entity engaged in manufacturing, distributing, or assembling a line-make of new vehicles and distributes them to dealers in this state. The definition also includes a central or principal sales corporation or other entity through which a manufacturer distributes its products.

Sections 37 to 52 provide new sections for current definitions by alphabetical order.

Sections 53 to 59 make technical language corrections for clarity purposes and provide harmonizing provisions.

Section 60 amends Sec. 60-1407 to delete the definition of "community" that is moved to Section 21 of the bill. The section also requires a manufacturer's license application to contain a statement that the manufacturer complies with the Motor Vehicle Industry Regulation Act, and a statement from all license applicants that the applicant will comply and be subject to the act, rules and regulations adopted by the Industry Licensing Board, and any amendments existing on the date of application.

Section 61 amends Sec. 60-1407.01 to require the executive director of the Industry Licensing Board to deny issuance or renewal of a license if the applicant does not comply with the Act, rules and regulations, and any amendments adopted by the board.

The section also amends a provision to explicitly state that no liability coverage requirement on the part of the dealer should be construed to imply that that dealer's insurance is the primary source of coverage for a claim involving the dealer's fleet.

Sections 62 and 63 provide harmonizing provisions.

Section 64 amends Sec. 60-1407.04 to prohibit a special sales permit being approved for one where the sole or primary purpose is the sale of motor vehicles in addition to the sale of motorcycles or trailers.

Sections 65 to 78 delete obsolete language and provide harmonizing provisions.

Section 79 amends Sec. 60-1430.02 to state that the payments currently required to be made to a terminated dealer are to be made when either the franchisor or franchisee terminates.

The section also adds additional payments that must be made to the franchisee if the franchisor terminates, eliminates, or ceases to manufacture a line-make. Additional payments include Fair Market Value of the franchise for the line-make. If the line-make is not the only one for which the franchisee holds a franchise, the franchisor must also make a contribution of the line-make towards payments of the rent or to covering obligations for the Fair Rental Value of the franchise facilities.

If the line-make is the only one for which the franchisee hold a franchise, the franchisor must also pay assistance for the equivalent of the greater of rent for the unexpired term of the lease or two years rent. If the franchisee owns the facility, the franchisor must pay for the reasonable rental value of the franchise facilities for two years. The franchisee is required to mitigate damages by attempting to sell or lease the facility and pay any net revenue back to the franchisor.

Section 80 provides harmonizing provisions.

Section 81 amends Sec. 60-1436 to prohibit the manufacturer/distributor from:

1. requiring the dealer to join, contribute to, or affiliate with an advertising association;
2. fixing the retail prices of vehicles or requiring the removal of additional products or services not made or distributed by the manufacturer/distributor; and
3. requiring the dealer to remove a competing line-make of motor vehicle from its facilities.

These prohibitions are also in effect for any subsidiary of the manufacturer/distributor which it has at least a 10 percent ownership interest, including a financing division.

Section 82 amends Sec. 60-1437 to include additional restrictions on the actions of a manufacturer/distributor. The manufacturer/distributor may not:

1. fail to offer the same franchise agreement under similar terms if the ownership of the manufacturer/distributor changes or the plan of distribution changes;
2. take an adverse action against a dealer because the dealer sells a vehicle that is later exported outside the United States. The dealer is presumed to not be in violation of such a provision if the vehicle has been titled, registered, and the required taxes on the vehicle have been paid;
3. discriminate against a dealer in favor of other dealers with the same line-make by selling vehicles at a lower actual price or offering a promotional program or incentive which are not offered to other franchise dealers;
4. require a dealer to offer or sell the manufacturer/distributor's service or maintenance contracts nor require the dealer to place financing with any particular financing source.

Any such actions on the part of the manufacturer/distributor are considered unfair trade practices and unfair methods of competition.

Section 83 amends Sec. 60-1438 to clarify that the franchisor may audit for fraudulent warranty claims for two years but may not deny claims based on technicalities (i.e. clerical error).

Sections 84 to 90 provide harmonizing provisions.

Section 91 repeals the original statutory sections.

Section 92 attaches the emergency clause to the bill.

Explanation of amendments:

The committee amendment, AM 1619, makes several changes to the original bill.

The bill's original Section 34 is stricken and amended with a new definition of line-make. The amendment gives a more detailed explanation of what constitutes a distinct line-make.

The amendment strikes the statement that a dealer's liability coverage requirement does not imply that it is the primary source of coverage for a claim involving a dealer's fleet.

The amendment includes language that a franchisor is not required to pay a franchisee for the termination or noncontinuation of a franchise that is implemented as a result of the sale of the assets or stock of the franchise.

The amendment creates an exclusion of the payment for the termination of a franchise when it is the termination of a line-make by a franchisor of recreational vehicles.

In the prohibited act by a manufacturer of underutilizing a dealer's facilities by requiring a dealer to exclude or remove a competing line-make of motor vehicle from its facilities, the amendment adds exclusion language that this does not prohibit a manufacturer from requiring exclusive sales facilities that are in compliance with reasonable requirements for the facilities.

The amendment removes the requirement that the dealer must have actual knowledge of a vehicle being exported outside the United States, but instead simply know about the exportation.

The amendment narrows the prohibition of manufacturers discriminating against a dealer in favor of other dealers by only pertaining to the dealers in Nebraska.

The amendment requires a dealer that has been rejected for warranty claim to resubmit the corrected claim in a timely manner.

Deb Fischer, Chairperson